**FARAD CONTINUATION SHEET NO.**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2900 OF 2005

| Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders. | Court's or Judge's Orders |
|---|---|

Mr. Anurag Jain for petitioner

Ms. M.M. Deshmukh, APP

Ms. Sonia Miskin for R-2

**CORAM: SMT. RANJANA DESAI, J.**
DATED:-11/12/2006

**P.C.**:-

By the impugned order dated 30/4/05, the Additional Sessions Judge, Pune has dismissed the revision application filed by the petitioner challenging the order passed by the learned Magistrate rejecting the application for condonation of delay in filing a complaint under Section 138 of the Negotiable Instruments Act, 1881.

The order dated 29/4/04 passed by the learned Magistrate indicates that the learned Magistrate was not

satisfied with the reason given for condonation of delay. The learned Sessions Judge who was hearing the revision carried from that order has not examined whether the explanation is proper or not. He has observed that the petitioner has nowhere mentioned under which provision the said application was moved. He has further observed that there is no provision under which such application can be made. Obviously the learned Sessions Judge is not right. His order is erroneous.

It appears that proviso to Section 142(b) was not brought to the notice of the learned Sessions Judge. In the circumstances the impugned order will have to be set aside. The matter will have to be remanded to the learned Sessions Judge for fresh disposal in accordance with law. Hence the following Order:

"The impugned order dated 30/4/05 is set aside. The learned Sessions Judge, Pune is directed to hear the

matter afresh after giving opportunity of hearing to the petitioner as well as the respondents in the light of the proviso to Section 142(b) of the Negotiable Instruments Act, 1881 in accordance with law.

It is made clear that as regards the explanation offered by the petitioner, I have expressed no opinion.

Writ petition is disposed of in the aforestated terms.

JUDGE.